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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/688,488	10/16/2000	Mario J. Restive	86165.000030	9902
23387	7590	08/26/2004	EXAMINER	
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			HWU, DAVIS D	
		ART UNIT	PAPER NUMBER	
			3752	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/688,488	RESTIVE, MARIO J.
	Examiner Davis Hwu	Art Unit 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 July 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-6,8 and 10-13 is/are rejected.
 7) Claim(s) 7,9 and 14 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

Response to Amendment

1. Applicant's amendment and remarks of June 21, 2004 are acknowledged and entered.
2. Applicant's remarks have been considered but are moot in view of the new ground(s) of rejection.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

4. Claims 1-6, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lejnar.

Lejnar shows a spray system comprising:

- a container 8;
- an outlet valve 150 connected to the container, the outlet valve being movable as recited;
- a spray assembly attached to the container, the spray assembly including a flow conduit 24 having a venturi 26;
- a plunger 146 in the sprayer assembly fluidly connected to the flow conduit and movable responsive in response to a flow in the flow conduit between a retracted and activating positions, the plunger having an end engaged against the outlet valve; and
- the outlet valve being movable between open and closed positions responsive to the movement of the plunger;

- wherein a positive pressure in the flow conduit is communicated to the plunger for moving the plunger to the activating position and a negative pressure in the flow conduit is exerted on the plunger in response to a flow through the venturi for moving the plunger to the activating position.

Claim Rejections - 35 USC § 103

5. Claims 8, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lejnar.

Lejnar discloses the structural limitations of the instant invention. The flow rate of less than 1.5 gpm would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Regarding claims 12-14, Lejnar discloses all of the structural limitations. Connecting the spray assembly to a hand operated pump would have been an obvious matter of user preference.

Allowable Subject Matter

6. Claims 7, 9, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis Hwu whose telephone number is 703-305-1663. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703)308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Davis Hwu